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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,396	09/23/2003	John C. Goodwin III	11486.00	2509
26884	7590	08/24/2011	EXAMINER	
PAUL W. MARTIN NCR CORPORATION, LAW DEPT. 3097 SATELLITE BLVD., 2nd FLOOR DULUTH, GA 30096			ARAQUE JR, GERARDO	
ART UNIT	PAPER NUMBER			
	3689			
NOTIFICATION DATE	DELIVERY MODE			
08/24/2011	ELECTRONIC			

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte JOHN C. GOODWIN, III*

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Appeal 2010-002400  
Application 10/668,396  
Technology Center 3600

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Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and BIBHU R.  
MOHANTY, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

### STATEMENT OF THE CASE

The Appellant seeks our review under 35 U.S.C. § 134 (2002) of the final rejection of claims 1-7, 14-18, and 21-22<sup>1</sup> which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

### SUMMARY OF THE DECISION

We AFFIRM.

### THE INVENTION

The Appellant's claimed invention is directed to a method of distinguishing store items having RFID labels from those brought into the store by the shopper (Spec. 2). Claim 1, reproduced below with the numbering in brackets added, is representative of the subject matter of appeal.

1. A method of distinguishing items for sale by a store from personal items brought into the store by a shopper comprising the steps of:
  - storing stored item. identification information associated with radio frequency identification (RFID) labels on items for sale by the store in an inventory file;
  - storing costs for items for sale in a price look-up file;
  - reading RFID labels of items read by an RFID label reader as part of a purchase transaction to obtain read identification information;
  - comparing the read identification information to the stored identification information to-determine whether each read RFID label

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<sup>1</sup> The Appeal Brief Supplement indicates that claims 8-13 and 19-20 are cancelled (Supplement to Appeal Brief, 1).

is associated with an item for sale;  
utilizing the item identification-information for each read RFID label associated with an item for sale to obtain the cost for the item from the price look-up file;  
[1] storing the item identification information for each read RFID associated with the item for sale in a transaction record of the shopper;  
ignoring the read identification information of any read RFID labels determined to be in the transaction record and thereafter ignoring the read identification information of any remaining read RFID labels determined not to be associated with an item for sale as being associated with personal items brought into the store by the shopper.

#### THE REJECTIONS

The Examiner relies upon the following as evidence in support of the rejections:

Bowers	US 6,025,780	Feb, 15, 2000
Otto	US 2003/0177053 A1	Sep. 18, 2003

The following rejections are before us for review:

1. Claims 1-7, 14-18, and 21-22 are rejected under 35 U.S.C. § 103(a) as unpatentable over Bowers and Otto.

#### THE ISSUES

The issue of the rejections made under 35 U.S.C. § 103(a) turns on whether the cited prior art discloses the claim limitations which have been specifically argued by the Appellant.

## FINDINGS OF FACT

We find the following enumerated findings of fact (FF) are supported at least by a preponderance of the evidence:<sup>2</sup>

- FF1. Bowers has disclosed a system that uses RFID tags with unique information and that can be stored in a database and compared to detected RFID tags (Abstract).
- FF2. Bowers in Fig. 13 discloses a database which contains a record of tag information including the tag serial number, information related to the article status (sold, unsold), and a description of the article.
- FF4. Bowers at 9:15-44 discloses that when a tagged article enters a detection zone that a computer uses a comparator 37 to search through the database for a match.
- FF5. Otto has disclosed a customer activity data system which analyzes transaction data from a terminal and information characterizing customer activity specific to an item with an RFID label (Abstract). Otto in Fig. 1 shows a customer activity data file 36.

## ANALYSIS

The Appellant argues that the rejection of claim 1 is improper (Br. 5-6). In contrast, the Examiner has determined that the rejection of record is proper (Ans. 7-9, 13-16).

We agree with the Examiner. Initially we note that the Appellant argues for claim 1 and provides the text of claim limitation [1] without

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<sup>2</sup> See *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

providing any substantive arguments in the Brief at 5:12-20. A statement that merely points out what a claim recites will not be considered an argument for separate patentability of the claim. 37 C.F.R. 41.37(o)(1) 2008.

The Appellant specifically argues that Bowers fails to disclose claim limitation [1] because it does not show a “transaction record for storing identification information of items associated with each RFID label read during a transaction” or “comparing the item identification in the transaction record to information in the RFID database” (Br. 6) but neither of these citations corresponds to the exact language present in the claim. To the extent argued, Bowers does disclose a database in Fig. 13 which contains a record of tag information of items (FF2) and that the system uses RFID tags (FF1). Bowers also discloses comparing read identification in the RFID tag to the stored identification (FF4). Note also that Otto in Fig. 1 shows a customer activity data file (FF5) which can serve as a “transaction record”. For these reasons the rejection of claim 1 is sustained. The Appellant provided the same arguments for claim 14 and failed to argue for the remaining claims and for the same reasons given above the rejection of these claims is sustained as well. Only those arguments actually made by Appellant have been considered in this decision. Arguments which Appellant could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2008)

**CONCLUSIONS OF LAW**

We conclude that Appellant has not shown that the Examiner erred in rejecting claims 1-7, 14-18, and 21-22 under 35 U.S.C. § 103(a) as unpatentable over Bowers and Otto.

**DECISION**

The Examiner's rejection of claims 1-7, 14-18, and 21-22 is sustained.

**AFFIRMED**

MP